IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1895 OF 2001

Tarun Bharat CHS Ltd. ..Petitioners
Vs.
Municipal Corpn. of Gr. Mumbai
& Ors. ..Respondents

Mr.D.S.Sakhalkar Advocate for Petitioners
Ms. A.Y. Sanglikar Advocate for Respondent No.1 & 2
Mr. Pradeep Jadhav, A.G.P. for Respondent No.3
Mr. P.S. Gidwani Advocate for Respondent No.4 to 6

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 16TH MARCH, 2005.

P.C.

. Petitioners by the present Petition contend that the land which is the subject matter of the present Petition has been reserved for Municipal garden under the D.P. Plan. It is their contention that the Respondents 4 to 14 have encroached on the said land. Reliefs are accordingly sought for.

2. From the records it appears that till date no Award has been passed though a declaration under Section 126 of MRTP Act was made as far back as 5th January, 1984. Whatever the position until the Award is made and compensation is paid to the owners the land does not vest in the Corporation. In other words the Petitionrs continues to be the owners of the land.

3. It is the Petitioners as owners of the land

who ought to have taken steps to prevent the properties which have been encroached. It is no doubt that statutory duty lies on the Corporation to prevent illegal constructions. That does not mean that the owners will not take steps in law to remove the construction and only depend on Respondent No.1 to discharge their duties.

. In these circumstances in the absence of knowing when the constructions came up this will not be a fit case for this court to exercise its extra ordinary jurisdiction. At the same time we see no reason if the land is reserved for a Municipal garden, as to why the Corporation in respect of such reservation does not take steps to proceed against the illegal construction, more so, considering that the declaration under Section 126 of MRTP Act was already issued. The Respondents considering that the proceedigs under Land Acquisition Act had already commenced, either to proceed to complete the proceedings and/or if not interested to give up the proceedings for acquisition. It is made clear that as the Petitioners continue to be the owners, they are entitled to take steps even today for removal of encroachments on their land.

. With the above discussion Petition stand disposed of. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)